IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE JURISDICTION

APPEAL FROM ORDER NO.770 of 2005

Premchand Meghaji Chheda .. Appellant

vs

Municipal Corpn. of Gr.Bombay & ors. Respondents

Mr.G.V,.Pandya for Appellant

Ms.Geeta Jogalekar for Respondents

Mr R.R.Salvi for Respondent no.3

CORAM : B.H.MARLAPALLE, J

DATE: 19th September, 2005

P.C.

1. Heard learned counsel for the respective parties.

2. This appeal arises from the order dated 27th June, 2005 passed by the learned Judge of the City

Civil Court, Mumbai dismissing the Notice of Motion No.4798 of 2004 filed in L.C.Suit No. 5573 of 2004. In the said Notice of Motion the plaintiff-appellant has prayed for an injunction from taking any action against the suit premises that is demolished without providing alternative accommodation to the plaintiff in its place and more particularly pursuant to the notice dated 23rd October, 2004 issued by the defendant no.1 Municipal Corporation. The plaintiff claimed that he was the tenant of the suit premises i.e. shop admeausuring 10 ft x 14 ft and it was known as "Janta Dry Fruits and Provision Stores" at Orlem, Marve Road, Malad (West) Mumbai and he had taken it on rent from the defendant no.3 though the shop and the land belonged to the defendant no.2-Church. The defendant no. 3 filed the written statement before the trial Court and submitted that she derived the title to the suit shop from her mother and not from the defendant no.2 and she was conducting the business from the said shop by name "Janta Dry Fruits and Provision Stores". She further submitted that the said business was being conducted by the plaintiff. The defendant no.1 claimed that Marve Road was required to be widened

to 90 Feet and at the junction the suit shop is located. It is required to be demolished for the said widening. As per the Corporation, the land on which the suit shop is located belongs to the defendantno. 2 -Church. The Corporation admits that it is in occupation of the owner and .... for an alternative accommodation provided there is only one claimant. The Corporation apprehends that the owner may come and claim compensation for the land and the structure and the plaintiff may go away with an alternative accommodation and this dual benefit is not permissible and in the given case it becomes the responsibility of the land owner to provide for an alternative accommodation to the tenant if the land is being developed. The plaintiff did not produce any no objection certificate from the actual owners of the land i.e. the defendant no.2 and therefore the plaintiff's request for an alternative accommodation could not be considered. This explanation has been accepted by the trial Court while dismissing the Notice of Motion.

3. At the first instance, the plaintiff's title to the suit structure is not certain and his claim for

tenancy has been denied by the defendant no.2. In addition the ownership of the said structure is also in dispute and under these circumstances, the claim of the plaintiff for an alternative accommodation should not be considered. No fault could be found for the reasons set out by the trial Court in the Notice of Motion.

4. This appeal therefore fails at the threshold. Appeal is dismissed in limine.

(B.H.Marlapalle, J)